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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Sherry A. Quirk
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July 3, 1996

BY HAND

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

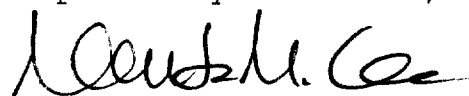
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Re: In the Matter of Implementation of Section 34(a)(1)
of the Public Utility Holding Company Act of 1935,
as Added by the Telecommunications Act of 1996
(GC Docket No. 96-101, FCC 96-192)

Dear Mr. Caton:

Enclosed please find the Reply Comments of the City of New Orleans regarding the above-referenced file. Also enclosed is an additional copy of the reply comments, which we ask that you stamp and give to the messenger for return to our office.

Respectfully submitted,



Sherry A. Quirk
Montina M. Cole
Attorneys for the City of
New Orleans

Enclosures

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

JUL 3 1996

In the Matter of Implementation)
of Section 34(a)(1) of the)
Public Utility Holding Company)
Act of 1935, as Added by the)
Telecommunications Act of 1996)
GC Docket No. 96-101,
FCC 96-192

REPLY COMMENTS OF THE CITY OF NEW ORLEANS

Pursuant to the Notice of Proposed Rulemaking of the Federal Communications Commission ("Commission"),^{1/} the City of New Orleans hereby timely files reply comments on the Commission's proposed rulemaking ("Proposed Rule") that would implement new § 34(a)(1) of the Public Utility Holding Company Act of 1935 ("PUHCA"),^{2/} which permits utility holding companies registered under PUHCA to invest in exempt telecommunications company ("ETC") entities, upon meeting certain requirements.

I. INTRODUCTION

Several commentors in this rulemaking proceeding, including New Orleans, have appropriately advocated the need for a meaningful ETC determination process, which fully reflects the intent of Congress. The public interest will not be served by providing "rubber stamp" approval of minimalist applications submitted by registered companies. The Commission can effectively promote competition in the telecommunications

^{1/} In the Matter of Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as Added by the Telecommunications Act of 1996, 61 Fed. Reg. 24743 (May 16, 1996).

^{2/} See 15 U.S.C. § 79 et seq., as amended by § 103 of the Telecommunications Act of 1996 (the "1996 Act," or the "Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996).

industry, without sacrificing the protection of consumers, including captive utility ratepayers. New Orleans urges the Commission to reject both underinclusive and overly expansionist interpretations of the 1996 Act, as the Act pertains to registered company investment in ETC entities.

II. DISCUSSION

A. The Commission Should Ensure that ETC Application Proceedings Are Meaningful

The Commission must require applicants to provide sufficient information regarding proposed ETC activities, and it should not unduly restrict the content of comments regarding applications. Otherwise, the ETC application process may be rendered meaningless.^{3/} Commentors, including New Orleans, have discussed the need to require substantive information in applications seeking ETC status.^{4/} Further, commentors have noted the risk of overly restricting the deliberation process

^{3/} See Comments of American Communications Services, Inc. at 10-11 (GC Docket No. 96-101) (filed June 17, 1996).

^{4/} Suggested minimal requirements include "a listing and description of the types of services that the ETC applicant plans to provide, and the geographic locations where the ETC applicant intends to provide them." See Comments of Southwestern Bell Telephone Company at 2 (GC Docket No. 96-101) (filed June 17, 1996). Other proposed minimum requirements would include "a description of the facilities which will be utilized in the provision of the described service," and an indication of whether the ETC, its affiliate, or the holding company will own the facilities. See Comments of BellSouth at 13-14 (GC Docket No. 96-101) (filed June 17, 1996). New Orleans has noted that the applicants' "brief description" should include specific information, and not simply a "recitation of the statute's language regarding the broad categories of telecommunications activities." See Comments of the City of New Orleans at 7, n.12 (GC Docket No. 96-101) (filed June 17, 1996).

regarding potential ETCs. As one commentor has stated:

[T]o argue, as the Notice seems to, that the Commission should automatically grant all ETC applications without consideration of anything other than the veracity of the statement that the company intends to provide telecommunications services, would eviscerate the requirement that the utilities seek ETC status. If the Congress intended all companies to automatically have ETC status, it could have done so without including a requirement that the utilities apply to the Commission for ETC status.^{5/}

B. At a Minimum, the Commission Should Require Disclosure Regarding Any State-jurisdictional Activities

In the instant proceeding, New Orleans has noted the importance of applicants including information on whether state approval has been obtained, or is being sought, for state-jurisdictional ETC activities.^{6/} Such information will assist retail regulators in efforts to monitor and regulate certain ETC investments that present potential cross-subsidy issues for captive utility ratepayers.^{7/}

In prior Commission proceedings regarding ETC status for Entergy affiliate companies, New Orleans also submitted that state approval of any state-jurisdictional ETC activities must precede a determination of ETC status.^{8/} While the Commission

^{5/} See Comments of the Association for Local Telecommunications Services, at 6, n.4 (GC Docket No. 96-101) (filed June 17, 1996).

^{6/} See Comments of the City of New Orleans at 7-9 (GC Docket No. 96-101) (filed June 17, 1996).

^{7/} See § 103(b) of the Act (Section 34(b) of PUHCA), which mandates that registered companies receive state approval of arrangements involving the disposition of certain utility assets for ETC purposes.

^{8/} See, e.g., Notice of Intervention, Comments and Request for Modification, or Rejection of Application of the City of New Orleans at 8-9 (File No. ETC-96-2) (filed March 11, 1996).

rejected this approach,^{9/} New Orleans continues to believe that a state approval requirement should be promulgated by the Commission, regarding state-jurisdictional activities, consistent with an analogous provision of the very same statute.^{10/}

Alternatively, as New Orleans has also discussed in initial comments in the instant proceeding, the Commission should require applicants to show that state approval of these activities has either been obtained or is being sought. Another commentator proposes that "[a]t a minimum, . . . documentation indicating that the appropriate state approvals have been received should accompany the ETC application."^{11/} The commentator "believes the Commission's rejection of calls for prior state approval in previous orders must be reevaluated."^{12/}

C. The Commission Should Reject Proposals to Unlawfully Expand the Activities of ETCs Beyond Telecommunications Investments

Lastly, despite the plain language of the 1996 Act, one commentator asks the Commission to "flexibly" interpret the exclusivity requirement, and allow ETCs to invest in "non-

^{9/} See Order, FCC 96-163, In the Matter of Application for Entergy Technology Company for Determination of Exempt Telecommunications Company Status under Section 34 of the Public Utility Holding Company Act of 1935, as amended by Section 103 of the Telecommunication Act of 1996 (File No. ETC-96-2) (issued April 12, 1996).

^{10/} See 15 U.S.C. § 79z-5a (PUHCA provision for exempt wholesale generators).

^{11/} See Comments of Cincinnati Bell Telephone at 4 (GC Docket 96-101) (filed June 17, 1996).

^{12/} Id.

telecommunications related activities."^{13/} Pursuant to the Act, Congress determined that an ETC must be "exclusively in the business of providing" telecommunications or information services, or other related products or services.^{14/} New Orleans submits that the Commission should reject this peculiar proposal to ignore the exclusivity requirement, as the proposal has no basis in the language or intent of the Act.

Further, allowing registered companies to invest in diversified activity not contemplated by the Act would present unexplored and unquantifiable risk to retail ratepayers. New Orleans has noted the risks inherent in utility diversification

^{13/} See Comments of Entergy Corporation at 4, 7 (GC Docket No. 96-101) (dated June 14).

^{14/} See § 34 (a) (1) of the 1996 Act (emphasis added).

in its prior comments,^{15/} as have several other commentators.^{16/}

III. CONCLUSION

WHEREFORE, for the foregoing reasons, New Orleans respectfully requests that the Commission adopt the proposals discussed herein, to help protect the interests of ratepayers and facilitate effective enforcement of PUHCA, as amended by the 1996 Act.

^{15/} See Comments of the City of New Orleans, at 3,n.5 (GC Docket No. 96-101) (filed June 16, 1996) (referencing a 1992 survey which found that "the financial results of utility diversification have been 'horrendous in the aggregate,'" and noting that diversification risks include cross-subsidization) (quoting Charles M. Studness, Earnings from Utility Diversification Ventures, Public Utilities Fortnightly, Sept. 1, 1992, 28-29).

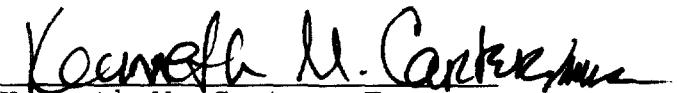
^{16/} See, e.g., Comments of Cincinnati Bell Telephone Company at 3 (GC Docket No. 96-101) (filed June 17, 1996) ("due to their regulated gas and electric operations, the holding companies will be in a position to subsidize their telecommunications operations through the rates charged to their gas and electric consumers unless appropriate safeguards are put in place."). See also Comments of the New Jersey Division of the Ratepayer Advocate at 3 (GC Docket No. 96-101) (dated June 14, 1996) (noting that "there is a genuine possibility that a [registered company] might subsidize the operations of its affiliated ETC."); and Comments of the United States Telephone Association at 1-2 (GC Docket No. 96-101) (filed June 17, 1996) (recognizing "the need to ensure that cross subsidization is not permitted.")

All correspondence should be directed to the Counsel and representatives of New Orleans listed below.

Respectfully submitted,

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Dated: July 3, 1996

CERTIFICATE OF SERVICE

The undersigned verifies that copies of the foregoing Reply Comments of the City of New Orleans were served upon the following, by first-class mail, postage prepaid except for Lawrence J. Spiwak and Jerry Cornfeld, both of whom were served by hand delivery.

Dated at Washington, D.C., this 3rd day of July, 1996.


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